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COUNTY OF CONTRA COSTA, BRIAN CAIN,
and FELICIA TORNABENE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WALTER WALTERS,
Plaintiff,

v.

COUNTY OF CONTRA COSTA;
BRIAN CAIN; FELICIA I.
TORNABENE; ANGELA D. PRASAD;
and DOES 1-100, inclusive;
Defendants.

No. 4:19-cv-00702 DMR

**DEFENDANTS' ANSWER TO FIFTH
AMENDED COMPLAINT**

Ctrm: 4, 3rd Floor
Judge: Hon. Donna M. Ryu, Presiding
Date Action Filed: February 7, 2019
Trial Date: October 26, 2020

Defendants COUNTY OF CONTRA COSTA, BRIAN CAIN and FELICIA
TORNABENE ("Defendants") answer the fifth amended complaint of Plaintiff WALTER
WALTERS ("Plaintiff") on file in this action as follows:

ANSWER

1. Answering paragraphs 2 and 45, Defendants admit the allegations contained therein.
2. Answering paragraphs 21, 26, 28, 34, 35, 37-41, 49-57, 60-65, 67, 68, 69, 70, 71, 74,
75, 77, 79, 84, 86, 87, 88, and 89, Defendants deny generally and specifically each and every
allegation contained therein.

1 3. Answering paragraphs 1, 6-10, 12-18, 20, 22, 24, 25, 27, 29-33, 36, 42, 43, 44, 46,
2 47, 48, 58, 66, 73, 76, 78-83, and 85, Defendants do not have sufficient information or belief
3 to enable it to answer said paragraphs, and on that ground deny each and every allegation
4 contained therein.

5 4. Answering paragraph 3, Defendants admit that, on the date of the incident, Deputy
6 Cain was employed as a deputy with the Contra Costa County Sheriff's Office and a County
7 employee. As to the remainder of the paragraph, Defendants do not have sufficient
8 information or belief to enable them to answer said paragraph, and on that ground deny each
9 and every allegation contained therein.

10 5. Answering paragraph 4, Defendants admit that Contra Costa County Regional
11 Medical Center is located in Martinez, California and is operated by Contra Costa County. As
12 to the remainder of the paragraph, Defendants do not have sufficient information or belief to
13 enable them to answer said paragraph, and on that ground deny each and every allegation
14 contained therein.

15 6. Answering paragraph 11, Defendants admit that plaintiff was placed at CCRMC as a
16 locum tenens anesthesiologist by a medical temporary staffing agency in or about October
17 2017. As to the remainder of the paragraph, Defendants do not have sufficient information or
18 belief to enable them to answer said paragraph, and on that ground deny each and every
19 allegation contained therein.

20 7. Answering paragraph 19, Defendants admit that Angela Prasad was Deputy Cain's
21 supervisor on December 29, 2017. As to the remainder of the paragraph, Defendants do not
22 have sufficient information or belief to enable them to answer said paragraph, and on that
23 ground deny each and every allegation contained therein.

24 **AFFIRMATIVE DEFENSES**

25 Defendants plead the following separate defenses. Defendants reserve the right to
26 assert additional affirmative defenses that discovery indicates are proper.

27 8. The complaint fails to state a claim on which relief can be granted against answering
28 defendants.

1 9. Defendants deny that the injuries or damages complained of, if any, were due to or
2 caused by any carelessness or negligence or any act or omission on the part or any employee of
3 said defendant acting in the course and scope of employment.

4 10. Plaintiff was contributorily negligent; that such contributory negligence was a
5 proximate cause of plaintiff's alleged damages, if any, which are therefore diminished in direct
6 proportion to the fault attributable to plaintiff as compared with that of any employee said
7 defendant.

8 11. Defendants allege that the action is barred by the provisions of sections 335.1, 340,
9 and 342 of the California Code of Civil Procedure.

10 12. The facts and damages sought by the plaintiff are in excess of and different from
11 what was claimed in the claim presented to Defendant pursuant to California Government
12 Code section 910.

13 13. Defendant and its employees are immune from civil liability pursuant to the
14 provisions of California Government Code sections 815.2 and 820.2 on the grounds that the
15 acts and/or omissions alleged in the complaint involved the exercise of discretion.

16 14. Defendant and its employees are immune from civil liability pursuant to the
17 provisions of California Government Code section 818.2 and 821 to the extent that the injuries
18 alleged in the complaint were caused wholly or in part by the adoption of or failure to adopt an
19 enactment and/or a failure to enforce an enactment.

20 15. Plaintiff's action is barred by the equitable doctrines of laches, estoppel, and
21 waiver, in that plaintiff has unreasonably delayed in taking action and/or making the claims
22 alleged in this lawsuit with respect to the events alleged in the complaint, even though he knew
23 or should have known in the exercise of reasonable diligence of the injuries and causes of
24 injuries alleged in the complaint.

25 16. Defendant and its employees are immune from civil liability pursuant to the
26 provisions of California Government Code Sections 815.2 and 820.4 to the extent that the
27 injuries alleged in the complaint were caused wholly or in part by the act or omission of a
28 public employee in executing or enforcing any law in the exercise of due care.

1 17. Plaintiff has failed to mitigate his damages, and said damages are reduced or
2 eliminated in proportion to said failure to mitigate.

3 18. Defendant is immune from suit pursuant to the immunities and defenses contained
4 in California Government Code sections 810 through 898.5.

5 19. Plaintiff's claims under the Federal Civil Rights Act are barred because the
6 complaint fails to allege facts that go beyond mere tortious conduct and rise to the dignity of a
7 civil rights violation.

8 20. Defendants are entitled to qualified immunity from liability under the Federal Civil
9 Rights Act because they acted in good faith with an honest and reasonable belief that their
10 actions were necessary and appropriate.

11 21. Defendants' alleged statements, if any, are privileged pursuant to Civil Code
12 section 47.

13 22. Defendants are immune from suit for the actions of others pursuant to Government
14 Code section 820.8.

15 **PRAYER**

16 Wherefore, Defendants prays that:

- 17 1. Plaintiff take nothing by his complaint;
18 2. Defendants be awarded judgment in their favor and the complaint be dismissed;
19 3. Defendants be awarded costs of suit; and
20 4. The Court grant Defendants such other and further relief as it deems just and
21 proper.

22 **JURY REQUEST**

23 Defendants request a trial by jury.

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2 DATED: February 18, 2020

SHARON L. ANDERSON
COUNTY COUNSEL

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5 By: /s/ Patrick L. Hurley
6 PATRICK L. HURLEY
7 Deputy County Counsel
8 Attorneys for Defendants
9 COUNTY OF CONTRA COSTA, BRIAN
10 CAIN, and FELICIA TORNABENE
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